IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 223 OF 2007.

Kings Wine Centre. ... Appellant.
Versus.
Mumbai Metropolitan Regional Development Authority. ... Respondent.

Shri G.S.Godbole along with Shri D.B.Sawant for the Appellant.

Shri K.S.Patil, A.G.P. for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 26th April, 2007.

P.C.:

1. Heard the learned Advocates appearing for the parties. This Appeal from Order is preferred by the original Plaintiff by which the Notice of Motion for temporary injunction taken out by the Appellant has been rejected. According to the case of the Appellant, in the suit premises he is running a liquor shop. The suit structure is required to be demolished for the purpose of widening of the road leading to Sewree as well as for construction of a fly-over on Ghatkopar-Mahul Road. An allotment has been made by the Respondent of a tenement in favour of the Appellant in lieu of the existing tenement. The suit was filed by the Appellant for a decree directing the Respondent to furnish and provide all the necessary documents and records relating to the said premises offered to the Appellant and to give a reasonable time to the Appellant to apply to the Excise

Authorities for a grant of licence in respect of the newly allotted premises and to comply with all such formalities as may be required to enable the Appellant to shift and carry on business from the alternate premises. Thus there is no substantive challenge in the suit to the proposed action of the Respondent of demolishing the suit structure.

2. A submission was made in this Appeal that what has been offered by the Respondent is a residential premises where the business cannot be carried on. An affidavit has been filed by the Executive Engineer of the Respondent stating therein as under:

> "(a) I say that at present commercial premises being shop No.1, Building No.3-C, Anjali Construction Nahur,Mumbai (hereinafter referred to as the said premises) is available for rehabilitation purpose. I say that I have issued letter dated 12.4.07 informing the Applicant about the readiness of the Respondent to accommodate him in the said premises. Hereto annexed and marked as Exhibit "X" is the copy of the letter dated 12.4.07.
>
> (b) I say that in response to my letter dated 12.4.07, the Applicant through his

Advocate's letter dated 17.4.2007 informed the Respondent that a Hanuman Mandir is situated nearby the said premises and the Collector Mumbai will not allow shifting of a wine shop to a location within the radius of 75 metres from religious or educational institutions. Hereto annexed and marked as Exhibit "X-1" is the copy of the letter dated 17.2.2007 by Applicant.

(c) I say that thereafter, I have surveyed the area where the said premises is located. I say that the Hanuman Mandir referred to by the Applicant's Advocate in his letter dated 17.4.07 is not within the radius of 75 meters from the premises offered by the Respondent."

The learned Advocate for the Respondent stated that the letter of allotment will be issued to the Appellant in respect of the premises described in the affidavit within a period of one week from today.

3. Submission of the learned Advocate for the Appellant was that longer time may be granted to vacate the existing premises as the Appellant will not be able to procure the licences and permissions for shifting till July 2007.

4. Considering the urgency involved in demolition of the suit structure, such a long time cannot be granted. However, Respondent will have to cooperate with the Appellant by providing necessary documents which are required for obtaining the licences and permissions from the authorities. Time can be granted to vacate till 15th May 2007.

5. Hence the Appeal is disposed of by passing the following order:

(i) Statements made in the affidavit of Shri Uttam J.Chavan, Executive Engineer are accepted.

(ii) The letter of allotment shall be issued by the Respondent in favour of the Appellant within a period of one week from today.

(iii) Time is granted to the Appellant to vacate existing structure and to shift to the newly allotted structure till 15th May 2007.

(iv) The Appeal is accordingly disposed of in the above terms. There will be no order as to costs.

(v) The parties to act on an authenticated copy of this order.

Judge.